

Service Date: October 16, 1989

FINAL ORDER NO. 5958

DEPARTMENT OF PUBLIC SERVICE REGULATION  
MONTANA PUBLIC SERVICE COMMISSION

In the Matter of the Application of	)	DOCKET NO. T-9458
MIDDLEWEST MOTOR FREIGHT BUREAU,	)	
Kansas City, Missouri, for Approval	)	
of Agreement under Section 69-12-601,	)	ORDER NO. 5958
MCA, <u>et. seq.</u>	)	

By application filed August 14, 1989, Middlewest Motor Freight Bureau, 215 Volker Boulevard, Kansas City, Missouri 64112, agent for and on behalf of motor carriers authorized to perform intrastate transportation of property within the State of Montana, seeks authorization to operate in Montana intrastate commerce as a rate bureau, pursuant to Section 69-12-601, MCA, et. seq. Applicant requests that the Commission grant Middlewest Motor Freight Bureau, agent, authorization to perform services as an intrastate motor carrier rate bureau within the State of Montana in conformance with procedures outlined in a carrier agreement filed with the Montana Public Service Commission, subject to the jurisdiction of that Commission, to permit Montana intrastate carriers to participate in collective ratemaking procedures.

Notice of the application was made to the general public

under service date of September 7, 1989. No protests to the granting of this application were received by the Commission.

Approval of carrier agreements are governed by Section 69-12-601, MCA, et seq. which provides in pertinent part, as follows: 69-12-601. Carrier agreements. (1) Any carrier, as defined in 69-12-101, which is a party to an agreement between or among two or more carriers relating to rates, fares, classifications, divisions, allowances, or charges (including charges between carriers and compensation paid or received for the use of facilities and equipment) or rules pertaining thereto or procedures for the joint consideration, initiation, or establishment thereof may, under such rules as the commission prescribes, apply to the public service commission for approval of the agreement. The commission shall by order approve any agreement if approval thereof is not prohibited by 69-12-602. The approval of the commission shall be granted only upon such terms and conditions as the commission may prescribe as necessary to enable it to grant its approval in accordance with this subsection. (2) Each conference, bureau, committee, or other organization established or continued pursuant to any agreement approved by the commission and the provisions of this section shall maintain such accounts, records, files and memoranda and shall submit to the commission such reports as may be prescribed the the commission. All such accounts, records, files, and memoranda shall be subject to the inspection by the commission or its duly authorized representative.

69-12-602. Limitations on carrier agreements. The commission may not approve under 69-12-601 any agreement: (1) between a carrier by highway and a carrier by rail unless it finds that such agreement is of the character described in 69-12-601 and is limited to matters relating to the transportation under joint rates or over through routes; (2) which it finds is an agreement with respect to pooling or division of traffic, service, or earnings; (3) which establishes a

procedure for the determination of any matter through joint consideration unless it finds that under the agreement there is accorded to each party the free and unrestrained right to take independent action either before or after any determination arrived at through such procedure.

69-12-605. Relationship of carrier agreements and antitrust laws. (1) The parties to any agreement approved by the commission under 69-12-601 and other persons are, if the approval of such agreement is not prohibited by 69-12-602, hereby exempted from Montana antitrust laws with respect to such agreement, including Title 30-chapter 14, part 2, or any other statutes prohibiting monopolies, price fixing, or restraint of trade. (2) Any action of the commission under 69-12-601 through 69-12-6-3 in approving an agreement, in denying an application for such approval, in terminating or modifying its approval of an agreement, in prescribing terms and conditions upon which its approval is to be granted, or in modifying such terms and conditions shall be construed as having effect solely with reference to the applicability of subsection (1).

After considering the evidence submitted by Applicant, the Commission makes the following:

#### FINDINGS OF FACT

1. Middlewest Motor Freight Bureau is a nonstock and nonprofit association incorporated under the laws of the State of Missouri, with headquarters at 215 Volker Boulevard, Kansas City, Missouri 64112. Certain Montana intrastate motor common carriers have designated Middlewest Motor Freight Bureau, agent through power of attorney, to act as their Montana intrastate rate bureau and to seek this authorization of their behalf.

2. Applicant has set forth the procedures to be followed by

in accordance with Montana Public Service Commission Regulations 38.3.2501 and Section 69-12-601, MCA, et seq.

3. Applicant states that said procedures fully conform to the Montana statutes and clearly accord to any member carriers the full and complete right of independent action.

#### CONCLUSIONS OF LAW

1. The Montana Public Service Commission properly exercises jurisdiction over the parties and subject matter in this proceeding.

2. Middlewest Motor Freight Bureau, Kansas City, Missouri, has proposed to establish an agreement between intercity common carriers of property by motor vehicles operating in Montana intrastate commerce that: a) Does not contemplate any agreements with rail carriers; b) Does not provide for pooling or division of traffic, service or earnings arrangements; c) Does provide for free and unrestricted independent actions to be taken by member carriers either before or after Applicant's normal rate establishing procedures have been realized.

3. The Commission afforded all parties interested in this proceeding proper notice and an opportunity to participate.

4. Applicant's Rate and Tariff Agreement complies with the provisions of 69-12-601, MCA, and should, therefore, be

APPROVED.

ORDER

NOW THEREFORE, at a session of the Public Service Commission, Department of Public Service Regulation of the State of Montana, held in its offices at 2701 Prospect Avenue, Helena, Montana, on the 16th day of October, 1989, there being present a quorum of Commissioners, there came regularly before the Commission for final action the matters and things in Docket No. T-9458, and the Commission being fully advised in the premises;

IT IS ORDERED by the Commission that the application of MIDDLEWEST MOTOR FREIGHT BUREAU, Kansas City, Missouri, for permission to establish an agreement between intercity common carriers of property by motor vehicle operating in Montana intrastate commerce, relating to fares, rates, classifications, allowances, charges and procedures for the joint consideration, initiation, or establishment of rules should be and it is hereby, APPROVED.

IT IS FURTHER ORDERED that a full, true and correct copy of this order be sent forthwith by certified mail to the Applicant herein.

THE FOREGOING ORDER was adopted by the Department of Public Service Regulation of the State of Montana, Public Service Commission, IN OPEN SESSION at Helena, Montana, this 16th day of October, 1989, by a vote of 5 - 0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION.

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CLYDE JARVIS, Chairman

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HOWARD L. ELLIS, Vice Chairman

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JOHN B. DRISCOLL, Commissioner

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DANNY OBERG, Commissioner

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WALLACE W. "WALLY" MERCER, Commissioner

ATTEST:

Ann Purcell  
Acting Commission Secretary

(SEAL)

NOTE: Any interested party may request the Commission to reconsider this decision. A motion to reconsider must be filed within ten (10) days. See 38.2.4806, ARM.